

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DUANE CHARLES ANDERSON,

Defendant.

CASE NO. 8:05CR199

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 139). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to the Defendant's placement in criminal history category V, arguing that the PSR is “at odds” with the plea agreement. The plea agreement states that the parties agreed that the Defendant's “criminal history is likely to be computed as a category III.” (Filing No. 111, ¶ 16.)

Generally, the Court generally looks with disfavor upon parties' plea agreements with respect to calculation of a defendant's criminal history points prior to preparation of the PSR. However, due to the underlying nature of the objection the matter will be heard at sentencing.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections to the PSR (Filing No. 139) will be heard at sentencing; and

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects.

DATED this 21st day of September, 2006.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge